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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Cellini et al.

Application No: 10/686,541

Filed: October 15, 2003

For: SELF-DEFENSE AND SAFETY TOOL

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Atty. Docket No: C-0130.07

Examiner: M. Cartagena

Group Art Unit: 3754

APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS  
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Sir:

Applicant timely presents its Brief on Appeal for the referenced application.

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### REAL PARTY IN INTEREST

The real party in interest is LIGHTSTICK PARTNERS, LLC, a Texas limited liability company, whose mailing address is P.O. Box 18404, San Antonio, Texas 78218.

### RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

### STATUS OF THE CLAIMS

Claims 1-20 remain in the referenced application.

Claims 1-12 and 14-20 stand rejected under 35 U.S.C. §102(b) by Mangels (U.S. Patent No. 3,716,170).

Claim 13 stands rejected under 35 U.S.C. §103(a) by Mangels (U.S. Patent No. 3,716,170) in view of Roberts (U.S. Patent No. 5,086,377).

### STATUS OF AMENDMENTS

Applicant's Amendment After Final Rejection dated May 4, 2006, has been entered into the referenced application. Applicant's Amendment "A" dated November 21, 2005 has been entered into the referenced application.

### SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of claim 1 consists of a tool 10 utilized for safety and self-defense. The tool 10 includes a body 11 defining a canister compartment 18 and a flashlight compartment 19 (see page 6, lines 7-17, in light of Figure 1). A flashlight head 15 secures to the body 11 at a first end 24 (see page 11, line 9, through page 12, line 4, in light of Figure 1). A switch assembly 14, housed by the body, controls power delivery to the flashlight head 15 from a battery disposed in the flashlight compartment 19 (see page 9, line 22, through page 11, line 8, in light of Figures 1, 8a, and 8b). A nozzle 12 secures to the body 11 at a second end 26 (see page 6, line 18,

through page 7, line 5, in light of Figures 1 and 7). A trigger assembly 13 mounts on the body 11 proximate to the switch assembly 14 (see page 7, lines 6-14, in light of Figures 1, 5a-c, and 6). Actuation of the trigger assembly 13 ejects spray through the nozzle 12 from a spray canister disposed in the canister compartment 18 (see page 8, line 22, through page 9, line 21, in light of Figures 1 and 3). The trigger assembly 13 or the switch assembly 14 may be actuated without changing grip on the body 11 (see page 12, lines 5-22, in light of Figures 1 and 3).

The subject matter of claim 16 consists of a method of self-defense utilizing a tool 10 including a switch assembly 14 (see page 9, line 22, through page 11, line 8, in light of Figures 1, 8a, and 8b) that operates a flashlight head 15 (see page 11, line 9, through page 12, line 4, in light of Figure 1). The tool 10 further includes a trigger 38 located proximate to the switch assembly 14, whereby the trigger 38 engages a spray canister disposed in the tool 10 (see page 7, lines 6-14, in light of Figures 1, 5a-c, and 6). The tool 10 still further includes a nozzle 12 secured to a second end 26 of the tool 10, whereby the spray canister communicates with the nozzle 12 (see page 6, line 18, through page 7, line 5, in light of Figures 1 and 7.) In the method, a user grips the tool 10 with a thumb positioned over the trigger 38. The user then moves the trigger 38 with the thumb from an unfired position to a fired position that ejects spray from the spray canister and through the nozzle 12 (see page 8, line 22, through page 9, line 21, in light of Figures 1 and 3).

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The rejection of claims 1-12 and 14-20 under 35 U.S.C. §102(b) by Mangels (U.S. Patent No. 3,716,170) is a subject of this Appeal.

The rejection of claim 13 under 35 U.S.C. §103(a) by Mangels (U.S. Patent No. 3,716,170) in view of Roberts (U.S. Patent No. 5,086,377) is a subject of this Appeal.

## ARGUMENT

### CLAIM 1:

In a Final Office Action dated February 10, 2006, the Examiner stated in the *Response to Arguments* that Applicant's claims do not recite the limitation of a "nozzle securable at a second end". Responsive thereto, Applicant respectfully submits claim 1, in line 6, recites "a nozzle securable at a second end". Applicant therefore respectfully traverses the rejection of claim 1 by Mangels on the basis claim 1 specifically recites a flashlight head securable to a body at a first end and a nozzle securable to the body at a second end, wherein actuation of a trigger assembly ejects spray through the nozzle.

Applicant respectfully submits that Mangels simply does not disclose a nozzle securable to a body at a second end whereby spray may be ejected through the nozzle. Mangels discloses a dual purpose flashlight 10 including a housing 11 with flashlight components located at an offset front portion 13. The housing 11 includes a bore 16 having a rear end and a forward end. Batteries 25 insert into the bore 16 and reside at the rear end thereof. A container 26 inserts into the bore 16 and resides at the forward end thereof. The container 26 includes a nozzle 60 that fits within an ejection tube 61 located at the offset front portion 13. Spray from the container 26 accordingly exits the flashlight 10 at the offset front portion 13 because the ejection tube 61 passes through the offset front portion 13. Mangels therefore does not disclose a nozzle securable to a body at a second end because both the flashlight components and the ejection tube 61 are positioned at the offset front portion 13.

The Examiner has argued that the flashlight components and the ejection tube 61 lie along different axes at the offset front portion 13, and, as such, are located at different ends of the housing 11. Applicant respectfully disagrees. While the flashlight components and the

ejection tube 61 lie along different axes at the offset front portion 13, the offset front portion 13 is located at what can be considered only a first or single end of the housing 11. The flashlight components and the ejection tube 61 therefore are located in the offset front portion 13 at the same end of the housing 11, and it is improper for the Examiner to assert otherwise. Mangels thus does not anticipate claim 1 because Mangels does not disclose each and every limitation recited therein.

CLAIM 2:

Applicant respectfully traverses the rejection of claim 2 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 3:

Applicant respectfully traverses the rejection of claim 3 by Mangels because Mangels discloses that a safety locking device 76 resides atop a trigger arrangement 68 and engages a flat raised surface of a barrel portion 12. Mangels accordingly does not disclose a safety aperture and a safety that mounts on a body and extends therein via the safety aperture. Mangels thus does not anticipate claim 3 because Mangels does not disclose the limitation recited therein.

CLAIM 4:

Applicant respectfully traverses the rejection of claim 4 by Mangels because, while Mangels discloses that a safety locking device 76 projects through openings in side walls of a trigger arrangement 68, the safety locking device 76 travels only transversely with respect to trigger arrangement 68. Mangels accordingly does not disclose that depression of a safety disengages the safety from a cavity in a trigger thereby permitting movement of the trigger to a fired position via the aperture. Mangels thus does not anticipate claim 4 because Mangels does not disclose the limitation recited therein.

CLAIM 5:

Applicant respectfully traverses the rejection of claim 5 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 6:

Applicant respectfully traverses the rejection of claim 6 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 7:

Applicant respectfully traverses the rejection of claim 7 over Mangels because, while Mangels discloses that a safety locking device 76 projects through openings in side walls of a trigger arrangement 68, the safety locking device 76 does not include a biasing member and travels only transversely with respect to trigger arrangement 68. Mangels accordingly does not disclose a biasing mechanism that biases a locking member against a trigger. Mangels thus does not anticipate claim 7 because Mangels does not disclose the limitation recited therein.

CLAIM 8:

Applicant respectfully traverses the rejection of claim 8 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 9:

Applicant respectfully traverses the rejection of claim 9 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 10:

Applicant respectfully traverses the rejection of claim 10 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 11:

Applicant respectfully traverses the rejection of claim 11 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 12:

Applicant respectfully traverses the rejection of claim 12 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 14:

Applicant respectfully traverses the rejection of claim 14 by Mangels because the switch 33 does not include a switch cap. Mangels thus does not anticipate claim 14 because Mangels does not disclose the limitation recited therein.

CLAIM 15:

Applicant respectfully traverses the rejection of claim 15 by Mangels based upon the preceding arguments with respect to claim 1.

CLAIM 16:

In a Final Office Action dated February 10, 2006, the Examiner stated in the *Response to Arguments* that Applicant's claims do not recite the limitation of a "nozzle securable at a second end". Responsive thereto, Applicant respectfully submits claim 16, in line 6, recites "a nozzle secured to a second end of the tool". Applicant therefore respectfully traverses the rejection of claim 16 by Mangels on the basis claim 16 specifically recites a flashlight head secured to the tool at a first end of the tool and a nozzle secured to the tool at a second end of the tool, wherein moving a trigger with the thumb ejects spray through the nozzle.

Applicant respectfully submits that Mangels simply does not disclose a nozzle secured to a tool at a second end of the tool whereby spray may be ejected through the nozzle. Mangels

discloses a dual purpose flashlight 10 including a housing 11 with flashlight components located at an offset front portion 13. The housing 11 includes a bore 16 having a rear end and a forward end. Batteries 25 insert into the bore 16 and reside at the rear end thereof. A container 26 inserts into the bore 16 and resides at the forward end thereof. The container 26 includes a nozzle 60 that fits within an ejection tube 61 located at the offset front portion 13. Spray from the container 26 accordingly exits the flashlight 10 at the offset front portion 13 because the ejection tube 61 passes through the offset front portion 13. Mangels therefore does not disclose a nozzle secured to a tool at a second end of the tool because both the flashlight components and the ejection tube 61 are positioned at the offset front portion 13.

The Examiner has argued that the flashlight components and the ejection tube 61 lie along different axes at the offset front portion 13, and, as such, are located at different ends of the housing 11. Applicant respectfully disagrees. While the flashlight components and the ejection tube 61 lie along different axes at the offset front portion 13, the offset front portion 13 is located at what can be considered only a first or single end of the housing 11. The flashlight components and the ejection tube 61 therefore are located in the offset front portion 13 at the same end of the housing 11, and it is improper for the Examiner to assert otherwise. Mangels thus does not anticipate claim 16 because Mangels does not disclose each and every limitation recited therein.

#### CLAIM 17:

Applicant respectfully traverses the rejection of claim 17 by Mangels based upon the preceding arguments with respect to claim 16.



CLAIM 18:

Applicant respectfully traverses the rejection of claim 18 by Mangels based upon the preceding arguments with respect to claim 16.

CLAIM 19:

Applicant respectfully traverses the rejection of claim 19 by Mangels based upon the preceding arguments with respect to claim 16.

CLAIM 20:

Applicant respectfully traverses the rejection of claim 20 by Mangels based upon the preceding arguments with respect to claim 16.

CLAIM 13:

Applicant respectfully traverses the rejection of claim 13 over Mangels in view of Roberts on the basis that, contrary to the assertion by the Examiner, Roberts does not disclose that a switch housing provide a fluid tight seal between a flashlight compartment and a canister compartment. Roberts discloses a wall in a cylindrical extension member 14 separating a battery compartment 85 from a spray device compartment 74. Roberts accordingly discloses only that a wall may separate compartment 85 from compartment 76. Roberts certainly does not in any way teach that a switch housing may separate compartment 85 from compartment 76. Roberts in fact does not even disclose a switch housing. Mangels in view of Roberts therefore does not render claim 13 obvious because that combination does not in any way disclose the use of a switch housing to provide a fluid tight seal between a flashlight compartment and a canister compartment.

In view of the foregoing, Applicant respectfully requests the Final Rejection of the Examiner dated August 28, 2005, be reversed.

Respectfully submitted,

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DATE: 3 August 2006

BY: 

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ATTORNEY FOR APPLICANT

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. §1.10 on the date indicated below, addressed to the Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450.

Express Mail No. EV 047630425 US Date: 3 August 2006

  
Christopher L. Makay

## CLAIMS APPENDIX

1. A tool, comprising:
  - a body defining a canister compartment and a flashlight compartment;
  - a flashlight head securable to the body at a first end;
  - a switch assembly housed by the body, wherein the switch assembly controls power delivery to the flashlight head from a battery disposed in the flashlight compartment;
  - a nozzle securable to the body at a second end; and
  - a trigger assembly mounted on the body proximate to the switch assembly, wherein actuation of the trigger assembly ejects spray through the nozzle from a spray canister disposed in the canister compartment, and further wherein either the trigger assembly or the switch assembly may be actuated without changing grip on the body.
2. The tool according to claim 1, wherein the trigger assembly comprises:
  - a trigger movable between an unfired position and a fired position that ejects spray through the nozzle from a spray canister disposed in the canister compartment; and
  - a safety coupled with the trigger to lock the trigger in the unfired position, wherein release of the safety unlocks the trigger and permits movement of the trigger to the fired position.
3. The tool according to claim 2, wherein the body includes:
  - a trigger aperture, wherein the trigger mounts on the body and extends therein via the trigger aperture; and
  - a safety aperture, wherein the safety mounts on the body and extends therein via the safety aperture.

4. The tool according to claim 3, wherein the trigger includes an aperture that terminates in a cavity engaged by the safety, wherein depression of the safety disengages the safety from the cavity and permits movement of the trigger to the fired position via the aperture.
  5. The tool according to claim 3, wherein the trigger, comprises:
    - an engaging member disposed through the trigger aperture; and
    - an activation member mounted on the body and coupled with the engaging member.
  6. The tool according to claim 2, wherein the trigger assembly mounts on the body in a location that permits gripping of the body underhanded with the thumb positioned over the safety and the trigger to permit the thumb to release the safety and move the trigger from the unfired position to the fired position.
  7. The tool according to claim 3, wherein the safety comprises:
    - a locking member disposed through the safety aperture; and
    - a biasing mechanism that biases the locking member against the trigger.
  8. The tool according to claim 1, wherein the nozzle includes a passageway therethrough.
- Claim 9 (original): The tool according to claim 8, wherein the nozzle includes a cavity communicating with the passageway, whereby the cavity receives a delivery tube of the spray canister therein.
10. The tool according to claim 1, wherein the switch assembly comprises:
    - a switch housing; and
    - a switch disposed in the switch housing and electrically connected to a positive terminal and a negative terminal.
  11. The tool according to claim 10, wherein the body includes a switch aperture.

12. The tool according to claim 11, wherein the switch housing is disposed in the body and the switch protrudes through the switch aperture to permit actuation thereof.
13. The tool according to claim 12, wherein the switch housing provides a fluid tight seal between the flashlight compartment and the canister compartment.
14. The tool according to claim 12, wherein the switch assembly further comprises a switch cap that mounts over the switch aperture.
15. The tool according to claim 1, wherein a user may strike with the tool without changing grip on the body.
16. A method of self-defense, comprising:  
providing a tool comprising:  
a switch assembly that operates a flashlight head secured to a first end of the tool,  
a trigger located proximate to the switch assembly, whereby the trigger engages a spray canister disposed in the tool, and  
a nozzle secured to a second end of the tool, whereby the spray canister communicates with the nozzle;  
gripping the tool with the thumb positioned over the trigger; and  
moving the trigger with the thumb from an unfired position to a fired position that ejects spray from the spray canister and through the nozzle.
17. The method of self-defense according to claim 16, further comprising releasing with the thumb a safety engaged with the trigger when the trigger is moved from the unfired to the fired position.
18. The method of self-defense according to claim 16, further comprising moving a safety from a safe position that blocks the trigger to a fire position that unblocks the trigger.

19. The method of self-defense according to claim 16, further comprising actuating the switch assembly with the thumb to deliver power to a flashlight head of the tool without changing grip on the tool.

20. The method of self-defense according to claim 16, further comprising striking with the tool without changing grip on the tool.

EVIDENCE APPENDIX

None